

U.S. Patent Application Serial No. 10/691,960
Response filed January 19, 2006
Reply to OA dated November 16, 2005

REMARKS

Claim 1 has been canceled without prejudice or disclaimer. Claims 2 - 5 have been amended, and claim 6 has been added in order to more particularly point out, and distinctly claim the subject matter to which the applicant regards as his invention. The applicant respectfully submits that no new matter has been added. It is believed that this Response is fully responsive to the Office Action dated November 16, 2005.

Claims 2 - 5 and 6 are currently pending in this patent application, claim 6 being an independent claim.

Claims 1 - 5 stand rejected under 35 USC §112, second paragraph, for the specific reasons set forth in item 2, page 2 of the outstanding Action. The applicant respectfully requests reconsideration of this rejection.

As indicated above, claim 1 has been canceled without prejudice or disclaimer. Thus, the rejection of this claim is now moot. In place of claim 1, claim 6 has been added. Claims 2 - 5 have been amended, and claim 6 has been added in order to more particularly point out, and distinctly claim the subject matter to which the applicant regards as his invention, and in order to correct

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certain informalities in the language of the claims, including those noted by the Examiner.

Accordingly, the withdrawal of the outstanding indefiniteness rejection under 35 USC § 112, second paragraph, is in order, and is therefore respectfully solicited.

As to the merits of this case, the following rejections are set forth:

(1) claims 1 - 3 and 5 (dependent on claim 1, 2 or 3) stand rejected under 35 USC § 102(b) as being anticipated by Bohrer (or record); and

(2) claims 4 and 5 (dependent on claim 4) stand rejected under 35 USC § 103(a) based on Bohrer.

The applicant respectfully requests reconsideration of these rejections.

Claim 1 has been canceled; thus, the rejection of claim 1 is moot. In place of canceled claim 1, claim 6 has been added. The applicant's claimed hydraulically-driven vehicle, as now set forth in added claim 6, includes a hydraulic motor (2); and a switching means for changing a maximum driving force of the hydraulic motor (2). The claimed hydraulic motor (2) is driven by oil pressure discharged from a hydraulic pump (1) to propel hydraulically-driven vehicle, and the claimed switching means is switched by an operator of the hydraulically-driven vehicle during operation of the hydraulically-driven vehicle in order to obtain efficient performance of the hydraulically-driven

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vehicle in the working conditions being encountered by the hydraulically-driven vehicle.

Significant claimed structural arrangements of the applicant's claimed hydraulically-driven vehicle, as now set forth in independent claim 6, include the claimed switching means for changing a maximum driving force of the hydraulic motor (2). As now further recited in independent claim 6, the claimed hydraulic motor (2) is driven by oil pressure discharged from a hydraulic pump (1) to propel hydraulically-driven vehicle, and the claimed switching means is switched by an operator of the hydraulically-driven vehicle during operation of the hydraulically-driven vehicle in order to obtain efficient performance of the hydraulically-driven vehicle in the working conditions being encountered by the hydraulically-driven vehicle.

In the last Amendment filed for this case, in traversing the Bohrer reference, the applicant took the position that in his invention, control of the maximum driving force is carried out by an operator, as the vehicle is operated, so as to improve the vehicle's performance in the working conditions being encountered. That is, determining whether the vehicle is in a particular gear of the gear box is not part of the control process.

In response, the Examiner has taken the position that the “applicant has not pointed out any distinction between the reference and that material which is actually recited in applicants’ claims.”^{1/}

Accordingly, in order to highlight the significant structural arrangement of the applicant’s claimed hydraulically-driven vehicle, the applicant has canceled independent claim 1, and in place thereof added independent claim 6. Claim 6 now more positively recites the claimed switching means for changing a maximum driving force of the hydraulic motor. To the contrary, in Bohrer, the speed adjustment device does not perform any function when gears of the gear box are in any of the lower gears. That is, in the applicant’s claimed invention, the claimed switching means changes the maximum driving force of the hydraulic motor in order to obtain efficient performance of the hydraulically-driven vehicle in any of the working conditions thereof.

As such, not all of the claimed elements, as now set forth in independent claim 6, are found in exactly the same situation and united in the same way to perform the identical function in Bohrer’s apparatus. Thus, there can be no anticipation under 35 USC §102(b) of the applicant’s claimed hydraulically-driven vehicle based on the Bohrer reference.

^{1/} See, lines 2 and 4, item 7, page 3 of the outstanding Action.

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Also, as now set forth in independent claim 6, the claimed hydraulically-driven vehicle is distinguishable over Bohrer's apparatus for the reasons discussed above. Thus, a person of ordinary skill in the art would not have found the applicant's claimed hydraulically-driven vehicle (as now set forth in independent claim 6) obvious, under 35 USC §103(a), based on the teachings of Bohrer.

Furthermore, claims 2 - 5 depend on claim 6, and further limit the scope of claim 6. Thus, at least for the reasons set forth above with respect to claim 6, claims 2 - 5 should now be similarly allowable.

Accordingly, the withdrawal of the outstanding rejection under 35 USC §102(b) as being anticipated by Bohrer, and the outstanding rejection under 35 USC §103(a) based on Bohrer, is in order, and is therefore respectfully solicited.

In view of the aforementioned amendments and accompanying remarks, claims, as amended, are in condition for allowance, which action, at an early date, is requested.

If, for any reason, it is felt that this application is not now in condition for allowance, the Examiner is requested to contact the applicant's undersigned attorney at the telephone number indicated below to arrange for an interview to expedite the disposition of this case.

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In the event that this paper is not timely filed, the applicant respectfully petitions for an appropriate extension of time. Please charge any fees for such an extension of time and any other fees which may be due with respect to this paper, to Deposit Account No. 01-2340.

Respectfully submitted,

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